

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of )  
)

James L. Bosler )  
)

Former Director and Person )  
Participating in the Conduct )  
of the Affairs of ABQ Corporation )  
and ABQ Bank, Federal Savings Bank, )  
Albuquerque, New Mexico )

No.: KC-94-06

Dated: May 13, 1994

ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision ("OTS") has conducted an investigation pursuant to OTS Resolution No. DAL-91-47, dated May 30, 1991, concerning Peoples Heritage Federal Savings and Loan Association, Salina, Kansas, now in receivership ("Peoples Heritage") and, as a result of that investigation, OTS finds that:

Background. During 1983, James L. Bosler ("BOSLER"), former director and person participating in the affairs of ABQ Corporation, formerly AmeriWest Financial Corporation (referred to herein as "ABQ" or "AmeriWest") and its wholly-owned subsidiary, ABQ Bank, Federal Savings Bank, formerly Albuquerque Federal Savings and Loan Association (referred herein as "ABQ Bank" or "Albuquerque Federal" or the "Institution"), was introduced to James R. Cruce, former chairman of the board ("Cruce"), and Thomas Burger, former senior executive vice president and director

("Burger") of Peoples Heritage. Subsequently, BOSLER established a borrowing relationship with Peoples Heritage wherein he obtained loans in excess of \$75,000,000 to finance various commercial real estate projects;

Acquisition of Control of AmeriWest

(a) During the period March through April 1985, BOSLER participated in separate meetings with Cruce and others wherein the participants, including BOSLER, discussed the investment potential of purchasing the stock of AmeriWest with the intention of taking control and having the ability to direct the management and policies of Albuquerque Federal;

(b) During May 1985, BOSLER again met with Cruce and others during which an oral understanding was reached by the participants, including BOSLER, on the manner in which to proceed with the acquisition of control of AmeriWest. This understanding included a meeting of the minds on the percentage of outstanding AmeriWest stock each individual would acquire, a deadline by which these stock purchases were to be completed, and a coordination of the timing of their respective stock purchases so as to minimize increases in the market price of the stock;

(c) Beginning shortly after the oral understanding had been reached and continuing through August 1985, BOSLER, Cruce, and others, acting in concert, accumulated AmeriWest stock in accordance with the above-referenced understanding. By virtue of

their aggregate stock holdings and while acting in concert, on or about October 28, 1985, BOSLER, Cruce and others were successful in electing representatives to the board of directors of AmeriWest and Albuquerque Federal;

(d) At all times relevant hereto, BOSLER was aware that AmeriWest stock was registered pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") and that the Exchange Act and Federal Home Loan Bank Board ("FHLBB") regulations, 12 C.F.R. Part 563d et seq., required the timely and accurate filing of certain reports with both the U.S. Securities and Exchange Commission and the FHLBB;

(e) Despite such knowledge, BOSLER engaged in an unsafe and unsound practice by filing inaccurate and misleading Schedule 13Ds that failed to disclose that he was acting in concert with a group of others seeking to acquire control of AmeriWest and Albuquerque Federal. These inaccurate and misleading securities filings included an August 2, 1985 Schedule 13D wherein "Item 6" required BOSLER to disclose any "Contracts, Arrangement, Understandings or Relationships With Respect to Securities of the Issuer (AmeriWest)." BOSLER's response to this question was "none;"

(f) The activities described above further constituted a violation of the Change in Savings and Loan Control Act ("Control Act"), 12 U.S.C. §1730(q) (1982), relocated by FIRREA at 12 U.S.C. § 1817(j)<sup>1</sup>, due to BOSLER's acting in concert with others to

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1. All references to the United States Code in this Order of Prohibition are as amended.

acquire control of an institution, the accounts of which were insured by the FSLIC, without the prior filing of a notice pursuant to either the Control Act or the Savings and Loan Holding Company Act, 12 U.S.C. § 1730a, relocated by FIRREA at 12 U.S.C. § 1476a, and obtaining favorable action thereon;

(g) The above-referenced actions and practices of BOSLER were undertaken and accomplished with willful or continuing disregard for the safety and soundness of AmeriWest and Albuquerque Federal, and resulted in loss or risk of loss to AmeriWest and Albuquerque Federal;

**BOSLER'S \$2,000,000 Loan from Peoples Heritage**

(a) On or about December 16, 1985, Cruce and Burger approached BOSLER and requested that he act as a nominee borrower on a \$2,000,000 unsecured commercial loan from Peoples Heritage. As part of this agreement, BOSLER signed a \$2,000,000 promissory note, dated December 16, 1985, payable to Peoples. Cruce, in turn, signed a promissory note, dated December 16, 1985, in a like amount and terms payable to BOSLER. The intent and purpose of Cruce's obligation to BOSLER was to provide full and complete coverage of Peoples Heritage's loan to BOSLER;

(b) With the full knowledge and/or acquiescence of BOSLER, the Peoples Heritage loan proceeds were subsequently disbursed to or for the benefit of Cruce and/or Burger;

(c) On or about April 1, 1986, BOSLER issued a check drawn on a Texas commercial bank ("Texas Bank I") to Peoples Heritage in the amount of \$46,444.44, representing interest due on the \$2,000,000 loan for the period of December 16, 1985 through March 1, 1986;

(d) On or about April 2, 1986, funds in the amount of \$64,777.78 were wire transferred from a Kansas commercial bank account owned and maintained by Cruce to an account held by BOSLER with Texas Bank I. These funds represented Cruce's reimbursement of accrued interest on the \$2,000,000 loan paid by BOSLER;

(e) On or about April 4, 1986, BOSLER issued another check drawn on Texas Bank I to Peoples Heritage in the amount of \$18,333.38, representing interest due on the \$2,000,000 loan for the month of March, 1986;

(f) BOSLER renewed and extended, effective March 1, 1986, the terms of the \$2,000,000 loan with Peoples Heritage. In turn, Cruce's obligation to Bosler was renewed and extended;

(g) On or about September 22, 1986, funds in the amount of \$2,106,944.23 were wire transferred, from a Kansas commercial bank account owned and maintained by Cruce, to an account held by BOSLER with Texas Bank I. On or about September 23, 1986, BOSLER directed that \$1,600,000 be wire transferred from Texas Bank I to another Texas commercial bank account owned and maintained by BOSLER ("Texas Bank II"). and further directed that \$500,000 be wire transferred from Texas Bank I to yet another Texas commercial bank account ("Texas Bank III");

(h) On September 26, 1986, BOSLER directed that \$1,600,000 and \$500,000 be wire transferred from the Texas Bank II and Texas Bank III accounts, respectively, to Peoples Heritage as payment on the \$2,000,000 loan. On or about October 7, 1986, BOSLER forwarded a check, drawn on Texas Bank II, in the amount of \$2,444.44 to Peoples Heritage representing the remaining balance due and owing on the \$2,000,000 loan;

(i) BOSLER, by participating in the disbursement of Peoples Heritage loan funds to Cruce and/or Burger, caused, brought about or knowingly participated in violations of 12 C.F.R. §§ 563.40, 563.43 and 571.7 (1987 & 1988);

(j) The above-described actions and practices of BOSLER were undertaken and accomplished with willful or continuing disregard for the safety and soundness of, and constituted a risk of loss to, Peoples Heritage;

#### **BOSLER'S \$5,000,000 Loan from Peoples Heritage**

(a) During the fall of 1987, BOSLER sought to renegotiate the terms of several outstanding commercial real estate loans with Peoples Heritage. During November 1987, Cruce and Burger advised BOSLER that the loans could be restructured provided BOSLER agreed to participate in yet another nominee loan transaction;

(b) As part of this arrangement, Cruce and Burger agreed to arrange for a \$5,000,000 unsecured loan to be made by Peoples Heritage to BOSLER with the understanding that BOSLER would, in turn, make approximately one half of the proceeds available to Cruce and Burger. In order to conceal the true nature of these

transactions, BOSLER, at the direction of Cruce and Burger, agreed to advance the funds borrowed from Peoples Heritage to a BOSLER employee who would, in turn, advance the funds to or for the benefit of Cruce and/or Burger;

(c) Beginning on November 25, 1987, BOSLER's employee began transferring funds from BOSLER's personal accounts to or for the benefit of Cruce and/or Burger. On December 7, 1987, Peoples Heritage made a \$5,000,000 unsecured loan to BOSLER and immediately disbursed loan proceeds in an amount that reimbursed BOSLER for the funds previously advanced to or for the benefit of Cruce and/or Burger. In furtherance of BOSLER's agreement with Cruce and/or Burger, BOSLER subsequently made additional loan draw requests from Peoples Heritage and directed, either personally or through an employee, that the loan proceeds be advanced to or for the benefit of Cruce and/or Burger;

(d) On or about December 7, 1988, BOSLER renewed and extended the terms of this \$5,000,000 loan and made additional draw requests from Peoples Heritage in amounts that increased the outstanding principal balance of the loan to approximately \$5,282,471;

(e) BOSLER, by and through the above-described actions and practices, ultimately caused the disbursement of a total of \$3,106,148 out of the \$5,200,000 loan proceeds to be paid to or for the benefit of Cruce and/or Burger;

(f) BOSLER, by participating in the disbursement of Peoples Heritage loan proceeds to or for the benefit of Cruce and/or Burger, engaged in unsafe or unsound practices and caused, brought about or knowingly participated in violations of 12 C.F.R. §§ 563.40, 563.43 and 571.7 (1987 & 1988);

(g) The above-described actions and practices of BOSLER were undertaken and accomplished with willful or continuing disregard for the safety and soundness of Peoples Heritage;

(h) As a result of the unsafe or unsound practices and the violations described above, Peoples Heritage has incurred a substantial financial loss on this loan to BOSLER;

WHEREAS, BOSLER, has executed a Stipulation and Consent to the Entry of an Order of Prohibition ("Stipulation"), which is accepted by the Office of Thrift Supervision ("OTS") acting through its Regional Director for the Midwest Regional Office ("Regional Director");

WHEREAS, BOSLER, by his execution of the Stipulation has consented and agreed to the issuance of this Order of Prohibition ("Order") pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e); and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue orders of prohibition where the respondent has consented to the issuance of the order;



NOW THEREFORE, THE OTS ORDERS AS FOLLOWS:

Order of Prohibition

1. BOSLER is prohibited from further participation, in any manner, in the conduct of the affairs of ABQ Bank, its holding company(ies), or service corporation(s).

2. BOSLER shall not hold any office in, or participate in any manner in the conduct of the affairs of any Federally regulated depository institution or any depository institution or other entity as set forth in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A) ("Covered Institution"), without the prior written approval of OTS (acting through its Director or an authorized representative thereof) and, the "appropriate Federal financial institutions regulatory agency" for the Federally regulated depository institution which is involved.

3. (a) Due to the operation of Section 8(e)(6) of the FDIA, 12 U.S.C. § 1818(e)(6), conduct prohibited by this Order, without the said prior written approval of the OTS and the "appropriate Federal financial institutions regulatory agency", also includes, without limitation: (1) soliciting, procuring, transferring, attempting to transfer, voting, or the attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution or entity described in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A); and (2) voting for a director, or serving as an institution-affiliated party.

(b) Nothing in this Order, however, prohibits BOSLER from the following activities, even though such activities may involve or relate to a Covered Institution:

(i) being a customer, as a depositor or borrower, of a Covered Institution; or

(ii) owning stock in a Covered Institution.

Provided, however, that activities outlined in this paragraph 3(b) above may not be performed in a manner that would make BOSLER an "institution-affiliated party" as that term is defined at Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

4. The Stipulation is made a part hereof and is incorporated herein by this reference.

5. This Order is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), and shall become effective on the date it is issued.

6. BOSLER, while expressly reserving the right to exercise any legitimate attorney-client privileges, shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

THE OFFICE OF THRIFT SUPERVISION

By: Harlan G. Halsne  
Harlan G. Halsne

Its: Midwest Regional Deputy Director

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Albuquerque, New Mexico )

No.: KC-94-06  
Dated: May 13, 1994

STIPULATION AND CONSENT TO  
THE ENTRY OF AN ORDER OF PROHIBITION

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the formal investigation concerning Peoples Heritage Federal Savings and Loan Association, Salina, Kansas ("Peoples Heritage"), and the exercise of its regulatory responsibilities, has informed James L. Bosler ("BOSLER"), former director and person participating in the conduct of the affairs of ABQ Corporation, formerly AmeriWest Financial Corporation (referred to herein as "ABQ" or "AmeriWest") and its wholly-owned subsidiary, ABQ Bank, Federal Savings Bank, formerly Albuquerque Federal Savings and Loan Association (referred to herein as "ABQ Bank" or "Albuquerque Federal" or the "Institution") that the OTS is of the opinion that the grounds exist to initiate an administrative prohibition proceeding against BOSLER pursuant to Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e)<sup>1</sup>; and

1. All references to the U.S.C. in this Stipulation and Consent to the Entry of an Order of Prohibition are as amended.

WHEREAS, BOSLER desires to cooperate with the OTS to avoid the time and expense of such administrative litigation and, without admitting and specifically disputing the statements and conclusions of the OTS, in accordance with Rule 408 of the Federal Rules of Evidence and without trial or hearing, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) At all times relevant hereto, ABQ Bank was a "savings association" as that term is defined by Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1462(4). Accordingly, it was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) Until August 9, 1989, the accounts of ABQ Bank were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), pursuant to Section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. § 1726(b), by reason of which it was an "insured institution" as that term was defined by the NHA.

(c) As of August 9, 1989, pursuant to the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), the insurance of the accounts of ABQ Bank were transferred to the Federal Deposit Insurance Corporation ("FDIC").

(d) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB") was the regulatory agency with jurisdiction over ABQ Bank, its directors, officers and persons participating in the conduct of its affairs, pursuant to Section 5 of HOLA, 12 U.S.C. § 1464.

(e) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS succeeded to the interests of the FHLBB with respect to the supervision and regulation of all savings associations, its directors, officers and persons participating in the conduct of its affairs.

(f) BOSLER, at times relevant hereto, was a director and/or a person participating in the conduct of the affairs of both ABQ and ABQ Bank. Accordingly, he is an "institution-affiliated party" of each, within the meaning of Section 3(u) of the Federal Deposit Insurance Act ("FDIA"), as amended by FIRREA, 12 U.S.C. § 1813(u).

(g) Pursuant to Section 3 of the FDIA, as amended by FIRREA, the OTS, as successor to the FHLBB, is the "appropriate Federal banking agency" to maintain an enforcement proceeding against a savings association and/or its institution-affiliated parties including its officers, directors and persons participating in the conduct of its affairs. Therefore, BOSLER is subject to the authority of the OTS to initiate and maintain a prohibition proceeding against him pursuant to Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

2. Consent. BOSLER consents to the issuance by the OTS of the accompanying Order of Prohibition ("Order"). He further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

3. Finality. The Order is issued by the OTS under the authority of Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Upon its issuance by the Regional Director or designee for the Midwest

Regional Office, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

4. Waivers. BOSLER waives the following:

(a) the right to be served with a written notice of the OTS's charges against him (referred to as a Notice of Intention to Prohibit) (see Section 8(e) of the FDIA);

(b) the right to an administrative hearing of the OTS's charges against him (see Section 8(e) of the FDIA);

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

(d) any and all claims for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

OTS agrees to refrain from seeking the issuance of additional enforcement orders or civil money penalties against BOSLER with respect to any matters discovered by the OTS as a result of its investigative proceeding, commenced pursuant to Midwest Regional Office Resolution No. DAL-91-47, dated May 30, 1991.

5. Other Government Actions Not Affected.

(a) BOSLER acknowledges and agrees that the consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of BOSLER that arise pursuant to this action or otherwise, and that may be or have been

brought by the Resolution Trust Corporation or any other government entity other than the OTS.

(b) By executing this Stipulation and Consent to Entry of an Order of Prohibition, BOSLER agrees that he will not assert this proceeding, his consent to the entry of the Order, and/or the entry of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other federal or state governmental entity.

6. Cooperation. BOSLER shall, at the OTS's request, on reasonable notice and without service of a subpoena, provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding brought by the OTS as a result of its investigation relating to Peoples Heritage and its institution-affiliated parties. BOSLER does not waive his privilege against self-incrimination under the Fifth Amendment of the United States Constitution, nor does he waive the effect of any previous grant of immunity and any testimony (or its derivative use) furnished by BOSLER under that grant of immunity. If BOSLER invokes his privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS may inquire or the production of any document requested by the OTS and OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., BOSLER will, consistent with any such grant of immunity, provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding on the matters for which immunity is given.

7. Acknowledgment of Criminal Sanctions. BOSLER acknowledges that Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), sets forth criminal penalties for knowing violations of the Order.

WHEREFORE, BOSLER executes this Stipulation and Consent to the Entry of an Order of Prohibition, intending to be legally bound hereby.

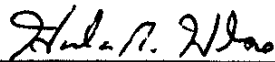
By:

  
James L. Bosler

Date: 4/28/94

Accepted by:

Office of Thrift Supervision

  
Harlan G. Halsne  
Its: Midwest Regional Deputy Director

Date: May 13, 1994